57.2 Responsibility for the conduct of investigations.
57.3 Scope and purpose of investigation; other sources of information.
57.4 Expiration date.

AUTHORITY: Sec. 816(b)(2), Pub. L. 94–106; 89 Stat. 531.

SOURCE: Order No. 644–76, 41 FR 12302, Mar. 25, 1976, unless otherwise noted.

§ 57.1 Responsibility for the conduct of litigation.

(a) In accord with 28 CFR 0.45(h), civil litigation under sec. 816 of the Department of Defense Appropriation Authorization Act, 1976, 10 U.S.C.A. 2304 note (hereafter the ''Act''), shall be conducted under the supervision of the Assistant Attorney General in charge of the Civil Division.

(b) In accord with 28 CFR 0.55(a), prosecution, under section 816(f) of the Act, of criminal violations shall be conducted under the supervision of the Assistant Attorney General in charge of the Criminal Division.

§ 57.2 Responsibility for the conduct of investigations.

(a) When an instance of alleged ''discrimination'' in violation of section 816(b)(1) of the Act is referred to the Department of Justice by the Department of Defense, the matter shall be assigned initially to the Civil Division.

(b)(1) If the information provided by the Department of Defense indicates that a non-criminal violation may have occurred and further investigation is warranted, such investigation shall be conducted under the supervision of the Assistant Attorney General in charge of the Civil Division.

(2) If the information provided by the Department of Defense indicates that a criminal violation under section 816(f) of the Act may have occurred, the Civil Division shall refer the matter to the Criminal Division. If it is determined that further investigation of a possible criminal violation is warranted, such investigation shall be conducted under the supervision of the Assistant Attorney General in charge of the Criminal Division.

(3) If a referral from the Department of Defense is such that both civil and criminal proceedings may be warranted, responsibility for any further investigation may be determined by the Deputy Attorney General.

§ 57.3 Scope and purpose of investigation; other sources of information.

(a) The authority granted the Attorney General by section 816(d)(1) of the Act (e.g., authority to inspect books and records) shall not be utilized until an appropriate official has defined, in an appropriate internal memorandum, the scope and purpose of the particular investigation.

(b) There shall be no use, with respect to particular information, of the authority granted by section 816(d)(1) of the Act until an appropriate official has determined that the information in question is not available to the Department of Justice from any other Federal agency or other responsible agency (e.g., a State agency).

(c) For purposes of this section, ''appropriate official'' means the Assistant Attorney General in charge of the division conducting the investigation, or his delegate.

§ 57.4 Expiration date.

This part shall remain in effect until expiration, pursuant to section 816(h) of the Act, of the Attorney General's authority under section 816 of the Act.

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994

Sec.

58.1 Authorization to establish panels of private trustees.
58.2 Authorization to appoint standing trustees.
58.3 Qualification for membership on panels of private trustees.
58.4 Qualifications for appointment as standing trustee and fiduciary standards.
58.5 Non-discrimination in appointment.
58.6 Procedures for suspension and removal of panel trustees and standing trustees.
58.7 Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code.
58.15 Qualifications for approval as a nonprofit budget and credit counseling agency.
58.16 Procedures for inclusion on the approved list.

58.17 Procedures for denying an application or removing an agency from the approved list, and the administrative review rights granted to denied or removed agencies.
58.18–58.24 [Reserved]
58.25 Qualifications for approval as providers of a personal financial management instructional course.
58.26 Procedures for inclusion on the approved provider list.
58.27 Procedures for denying an application or removing a provider from the approved list, and the administrative review rights granted to denied or removed providers.
APPENDIX A TO PART 58—GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. 330

AUTHORITY: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

SOURCE: Order No. 921–80, 45 FR 82631, Dec. 16, 1980, unless otherwise noted.

§ 58.1 Authorization to establish panels of private trustees.

(a) Each U.S. Trustee is authorized to establish a panel of private trustees (the ''panel'') pursuant to 28 U.S.C. 586(a)(1).

(b) Each U.S. Trustee is authorized, with the approval of the Director, Executive Office for United States Trustees (the ''Director'') to increase or decrease the total membership of the panel. In addition, each U.S. Trustee, with the approval of the Director, is authorized to institute a system of rotation of membership or the like to achieve diversity of experience, geographical distribution or other characteristics among the persons on the panel.

[Order No. 921–80, 45 FR 82631, Dec. 16, 1980, as amended at 62 FR 30183, June 2, 1997]

§ 58.2 Authorization to appoint standing trustees.

Each U.S. Trustee is authorized, subject to the approval of the Deputy Attorney General, or his delegate, to appoint and remove one or more standing trustees to serve in cases under chapters 12 and 13 of title 11, U.S. Code.

[Order No. 51 FR 44288, Dec. 9, 1986]

§ 58.3 Qualification for membership on panels of private trustees.

(a) To be eligible for appointment to the panel and to retain eligibility therefor, an individual must possess the qualifications described in paragraph (b) of this section in addition to any other statutory qualifications. A corporation or partnership may qualify as an entity for appointment to the private panel. However, each person who, in the opinion of the U.S. Trustee or of the Director, performs duties as trustee on behalf of a corporation or partnership must individually meet the standards described in paragraph (b) of this section, except that each U.S. Trustee, with the approval of the Director, shall have the discretion to waive the applicability of paragraph (b)(6) of this section as to any individual in a non-supervisory position. No professional corporation, partnership, or similar entity organized for the practice of law or accounting shall be eligible to serve on the panel.

(b) The qualifications for membership on the panel are as follows:

(1) Possess integrity and good moral character.

(2) Be physically and mentally able to satisfactorily perform a trustee's duties.

(3) Be courteous and accessible to all parties with reasonable inquiries or comments about a case for which such individual is serving as private trustee.

(4) Be free of prejudices against any individual, entity, or group of individuals or entities which would interfere with unbiased performance of a trustee's duties.

(5) Not be related by affinity or consanguinity within the degree of first cousin to any employee of the Executive Office for United States Trustees of the Department of Justice, or to any employee of the office of the U.S. Trustee for the district in which he or she is applying.

(6)(i) Be a member in good standing of the bar of the highest court of a state or of the District of Columbia; or

(ii) Be a certified public accountant; or

(iii) Hold a bachelor's degree from a full four-year course of study (or the equivalent) of an accredited college or university (accredited as described in part II, section III of Handbook X118 promulgated by the U.S. Office of Personnel Management) with a major in a business-related field of study or at least 20 semester-hours of business-related courses; or hold a master's or doctoral degree in a business-related field of study from a college or university of the type described above; or

(iv) Be a senior law student or candidate for a master's degree in business administration recommended by the relevant law school or business school dean and working under the direct supervision of:

(A) A member of a law school faculty; or

(B) A member of the panel of private trustees; or

(C) A member of a program established by the local bar association to provide clinical experience to students; or

(v) Have equivalent experience as deemed acceptable by the U.S. Trustee.

(7) Be willing to provide reports as required by the U.S. Trustee.

(8) Have submitted an application under oath, in the form prescribed by the Director, to the U.S. Trustee for the District in which appointment is sought: *Provided*, That this provision may be waived by the U.S. Trustee on approval of the Director.

§ 58.4 Qualifications for appointment as standing trustee and fiduciary standards.

(a) As used in this section—

(1) The term *standing trustee* means an individual appointed pursuant to 28 U.S.C. 586(b).

(2) The term *relative* means an individual who is related to the standing trustee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or an individual whose close association to the standing trustee is the equivalent of a spousal relationship.

(3) The term *financial or ownership interest* excludes ownership of stock in a publicly-traded company if the ownership interest in not controlling.

(4) The word *region* means the geographical area defined in 28 U.S.C. 581.

(b) To be eligible for appointment as a standing trustee, an individual must have the qualifications for membership on a private panel of trustees set forth in §§ 58.3 (b)(1)–(4), (6)–(8). An individual need not be an attorney to be eligible for appointment as a standing trustee. A corporation or partnership may be appointed as standing trustee only with the approval of the Director.

(c) The United States Trustee shall not appoint as a standing trustee any individuals who, at the time of appointment, is:

(1) A relative of another standing trustee in the region in which the standing trustee is to be appointed;

(2) A relative of a standing trustee (in the region in which the standing trustee is to be appointed), who, within the preceding one-year period, died, resigned, or was removed as a standing trustee from a case;

(3) A relative of a bankruptcy judge or a clerk of the bankruptcy court in the region in which the standing trustee is to be appointed;

(4) An employee of the Department of Justice within the preceding one-year period; or

(5) A relative of a United States Trustee or an Assistant United States Trustee, a relative of an employee in any of the offices of the United States Trustee in the region in which the standing trustee is to be appointed, or a relative of an employee in the Executive Office for United States Trustees.

(d) A standing trustee must, at a minimum, adhere to the following fiduciary standards:

(1) *Employment of relatives*. (i) A standing trustee shall not employ a relative of the standing trustee.

(ii) A standing trustee shall also not employ a relative of the United States Trustee or of an Assistant United States Trustee in the region in which the trustee has been appointed or a relative of a bankruptcy court judge or of the clerk of the bankruptcy court in the judicial district in which the trustee has been appointed.

(iii)(A) Paragraphs (d)(1) (i) and (ii) of this section shall not apply to a spouse of a standing trustee who was employed by the standing trustee as of August 1, 1995.

(B) For all other relatives employed by a standing trustee as of August 1, 1995, paragraphs (d)(1) (i) and (ii) of this section shall be fully implemented by October 1, 1998, unless specifically provided below:

(*1*) The United States Trustee shall have the discretion to grant a written waiver for a period of time not to exceed 2 years upon a written showing by the standing trustee of compelling circumstances that make the continued employment of a relative necessary for a standing trustee's performance of his or her duties and written evidence that the salary to be paid is at or below market rate.

(*2*) Additional waivers, not to exceed a period of two years each, may be granted under paragraph (d)(1)(iii)(B)(*1*) of this section provided the standing trustee makes a similar written showing within 90 days prior to the expiration of a present waiver and the United States Trustee determines that the circumstances for waiver are met.

(*3*) No waivers will be granted for a relative of the United States Trustee or of an Assistant United States Trustee.

(2) *Related party transactions.* (i) A standing trustee shall not direct debtors or creditors of a bankruptcy case administered by the standing trustee to an individual or entity that provides products or services, such as insurance or financial counseling, if a standing trustee is a relative of that individual or if the standing trustee or relative has a financial or ownership interest in the entity.

(ii) A standing trustee shall not, on behalf of the trust, contract or allocate expenses with himself or herself, with a relative, or with any entity in which the standing trustee or a relative of the standing trustee has a financial or ownership interest if the costs are to be paid as an expense out of the fiduciary expense fund.

(iii)(A) The United States Trustee may grant a waiver from compliance with paragraph (d)(2)(ii) of this section for up to three years following the appointment of a standing trustee if the newly-appointed standing trustee can demonstrate in writing that a waiver is necessary and the cost is at or below market.

(B) The United States Trustee may grant a provisional waiver from compliance with the allocation prohibition contained in paragraph (d)(2)(ii) of this section if one of the following conditions is present:

(*1*) A standing trustee has insufficient receipts to earn maximum annual compensation as determined by the Director during any one of the last three fiscal years and provides the United States Trustee with an appraisal or other written evidence that the allocation is necessary and the allocated cost is at or below market rate for that good or service, or

(*2*) A chapter 13 standing trustee also serves as a trustee in chapter 12 cases and provides the United States Trustee with an appraisal or other written evidence that the allocation is necessary and the allocated cost is at or below market rate for that good or service.

(C) Except as otherwise provided in this paragraph, a standing trustee may seek a reasonable extension of time from the United States Trustee to comply with paragraph (d)(2)(ii) of this section. To obtain an extension, a standing trustee must demonstrate by an appraisal or other written evidence, satisfactory to the United States Trustee, that the expense is necessary and at or below market rate. In no event shall an extension be granted for the use and occupation of real estate beyond October 1, 2005. For personal property and personal service contracts, no extension shall be granted beyond October 1, 1998.

(3) *Employment of other standing trustees.* A standing trustee shall not employ or contract with another standing trustee to provide personal services for compensation payable from the fiduciary expense fund. This section does not prohibit the standing trustee from reimbursing the actual, necessary expenses incurred by another standing trustee who provides necessary assistance to the standing trustee provided that the reimbursement has been preapproved by the United States Trustee.

(e) Paragraph (d) of this section is effective July 2, 1997. As to those standing trustees who are appointed as of

July 2, 1997, paragraph (d) will be applicable on the first day of their next fiscal year (i.e., October 1, 1997, for chapter 13 trustees and January 1, 1998, for chapter 12 trustees).

[62 FR 30183, June 2, 1997]

§58.5 Non-discrimination in appointment.

The U.S. Trustees shall not discriminate on the basis of race, color, religion, sex, national origin or age in appointments to the private panel of trustees or of standing trustees and in this regard shall assure equal opportunity for all appointees and applicants for appointment to the private panel of trustees or as standing trustee. Each U.S. Trustee shall be guided by the policies and requirements of Executive Order 11478 of August 8, 1969, relating to equal employment opportunity in the Federal Government, section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16), section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a), and the regulations of the Office of Personnel Management relating to equal employment opportunity (5 CFR part 713).

[Order No. 921–80, 45 FR 82631, Dec. 16, 1980, as amended by Order No. 960–81, 46 FR 52360, Oct. 27, 1981]

§58.6 Procedures for suspension and removal of panel trustees and standing trustees.

(a) A United States Trustee shall notify a panel trustee or a standing trustee in writing of any decision to suspend or terminate the assignment of cases to the trustee including, where applicable, any decision not to renew the trustee's term appointment. The notice shall state the reason(s) for the decision and should refer to, or be accompanied by copies of, pertinent materials upon which the United States Trustee has relied and any prior communications in which the United States Trustee has advised the trustee of the potential action. The notice shall be sent to the office of the trustee by overnight courier, for delivery the next business day. The reasons may include, but are in no way limited to:

(1) Failure to safeguard or to account for estate funds and assets;

(2) Failure to perform duties in a timely and consistently satisfactory manner;

(3) Failure to comply with the provisions of the Code, the Bankruptcy Rules, and local rules of court;

(4) Failure to cooperate and to comply with orders, instructions and policies of the court, the bankruptcy clerk or the United States Trustee;

(5) Substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees;

(6) Failure to display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public;

(7) Failure to adequately monitor the work of professionals or others employed by the trustee to assist in the administration of cases;

(8) Failure to file timely, accurate reports, including interim reports, final reports, and final accounts;

(9) Failure to meet the eligibility requirements of 11 U.S.C. 321 or the qualifications set forth in 28 CFR 58.3 and 58.4 and in 11 U.S.C. 322;

(10) Failure to attend in person or appropriately conduct the 11 U.S.C. 341(a) meeting of creditors;

(11) Action by or pending before a court or state licensing agency which calls the trustee's competence, financial responsibility or trustworthiness into question;

(12) Routine inability to accept assigned cases due to conflicts of interest or to the trustee's unwillingness or incapacity to serve;

(13) Change in the composition of the chapter 7 panel pursuant to a system established by the United States Trustee under 28 CFR 58.1;

(14) A determination by the United States Trustee that the interests of efficient case administration or a decline in the number of cases warrant a reduction in the number of panel trustees or standing trustees.

(b) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director, Executive Office for United States Trustees, no later than 20 calendar days from the date of issuance of the

United States Trustee's notice (''request for review''). In order to be timely, a request for review must be received by the Office of the Director no later than 20 calendar days from the date of the United States Trustee's notice to the trustee.

(c) A decision by a United States Trustee to suspend or terminate the assignment of cases to a trustee shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a final written decision by the Director.

(d) Notwithstanding paragraph (c) of this section, a United States Trustee's decision to suspend or terminate the assignment of cases to a trustee may include, or may later by supplemented by an interim directive, by which the United States trustee may immediately discontinue assigning cases to a trustee during the review period. A United States Trustee may issue such an interim directive if the United States Trustee specifically finds that:

(1) A continued assignment of cases to the trustee places the safety of estate assets at risk ;

(2) The trustee appears to be ineligible to serve under applicable law, rule, or regulation;

(3) The trustee has engaged in conduct that appears to be dishonest, deceitful, fraudulent, or criminal in nature; or

(4) The trustee appears to have engaged in other gross misconduct that is unbefitting his or her position as trustee or violates the trustee's duties.

(e) If the United States Trustee issues an interim directive, the trustee may seek a stay of the interim directive from the Director if the trustee has timely filed a request for review under paragraph (b) of this section.

(f) The trustee's written request for review shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials that the trustee wants the Director to consider in reviewing the decision. The trustee shall send a copy of the request for review, and the accompanying documents and materials, to the United States Trustee by overnight courier, for delivery the next business day. The trustee may request that specific documents in the possession of the United States Trustee be transmitted to the Director for inclusion in the record.

(g) The United States Trustee shall have 15 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee. Both copes shall be sent by overnight courier, for delivery the next business day.

(h) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(i) Unless the trustee and the United States Trustee agree to a longer period of time, the Director shall issue a written decision no later than 30 calendar days from the receipt of the United States Trustee's response to the trustee's request for review. That decision shall determine whether the United States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion, and shall adopt, modify or reject the United States Trustee's decision to suspend or terminate the assignment of future cases to the trustee. The Director's decision shall constitute final agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the United States Trustee's decision or a Program employee who is located within the region of the United States Trustee who made the decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) This rule does not authorize a trustee to seek review of any decision to increase the size of the chapter 7 panel or to appoint additional standing trustees in the district or region.

(l) A trustee who files a request for review shall bear his or her own costs and expenses, including counsel fees.

[62 FR 51750, Oct. 2, 1997]

§ 58.7 Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code.

(a) *UST Form 101–7–TFR, Chapter 7 Trustee's Final Report.* A chapter 7 trustee must complete UST Form 101–7–TFR final report (TFR) in preparation for closing an asset case. This report must be submitted to the United States Trustee after liquidating the estate's assets, but before making distribution to creditors, and before filing it with the United States Bankruptcy Court. The TFR must contain the trustee's certification, under penalty of perjury, that all assets have been liquidated or properly accounted for and that funds of the estate are available for distribution. Pursuant to 28 U.S.C. 589b(d), the TFR must also contain the following:

(1) Summary of the trustee's case administration;

(2) Copies of the estate's financial records;

(3) List of allowed claims;

(4) Fees and administrative expenses; and

(5) Proposed dividend distribution to creditors.

(b) *UST Form 101–7–NFR Chapter 7 Trustee's Notice of Trustee's Final Report.* After the TFR has been reviewed by the United States Trustee and filed with the United States Bankruptcy Court, if the net proceeds realized in an estate exceed the amounts specified in Fed. R. Bankr. P. 2002(f)(8), UST Form 101–7–NFR (NFR) must be sent to all creditors as the notice required under Fed. R. Bankr. P. 2002(f). The NFR must show the receipts, approved disbursements, and any balance identified on the TFR, as well as the information required in the TFR's Exhibit D. In addition, the NFR must identify the procedures for objecting to any fee application or to the TFR.

(c) *UST Form 101–7–TDR Chapter 7 Trustee's Final Account, Certification The Estate Has Been Fully Administered and Application of Trustee To Be Discharged.* After distributing all estate funds, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court the trustee's final account, UST Form 101–7–TDR (TDR). The TDR must contain the trustee's certification, under penalty of perjury, that the estate has been fully administered and the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the TDR must also include the following:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Claims asserted;

(6) Claims allowed; and,

(7) Distributions to claimants and claims discharged without payment, in each case by appropriate category.

(d) *UST Form 101–7–NDR Chapter 7 Trustee's Report of No Distribution.* In cases where there is no distribution of funds the case trustee must submit to the United States Trustee and file with the United States Bankruptcy Court UST Form 101–7–NDR (NDR). The NDR must contain the trustee's certification that the estate has been fully administered, that the trustee has neither received nor disbursed any property or money on account of the estate, and that there is no property available for distribution over and above that exempted by law. In addition, the NDR must set forth the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the NDR must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Claims asserted;

(5) Claims scheduled; and,

(6) claims scheduled to be discharged without payment.

(e) *UST Form 101–12–FR–S, Chapter 12 Standing Trustee's Final Report and Account and UST Form 101–13–FR–S, Chapter 13 Standing Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a standing trustee has been appointed, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101–12–FR–S for chapter 12 cases or UST Form 101–13–FR–S for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification that the estate has been fully administered if not converted to another chapter and a request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) Defaults by the debtor in performance under the plan.

(f) *UST Form 101–12–FR–C, Chapter 12 Case Trustee's Final Report and Account, and UST Form 101–13–FR–C, Chapter 13 Case Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a case trustee has been appointed, the trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101–12–FR–C for chapter 12 cases, or UST Form 101–13–FR–C for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification, submitted under penalty of perjury, that the estate has been fully administered if not converted to another chapter and the trustee's request to be discharged from further duties as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) defaults by the debtor in performance under the plan.

(g) *Mandatory Usage of Uniform Forms.* The Uniform Forms associated with this rule must be utilized by trustees when completing their final reports and final accounts. All trustees serving in districts where a United States Trustee is serving must use the Uniform Forms in the administration of their cases, in the same manner, and with the same content, as set forth in this rule:

(1) All Uniform Forms may be electronically or mechanically reproduced so long as all the content and the form remain consistent with the Uniform Forms as they are posted on EOUST's Web site;

(2) The Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a ''smart form'' meaning the forms are data enabled, unless the court offers an automated process that has been approved by EOUST, such as the virtual NDR event through CM/ECF.

[73 FR 58444, Oct. 7, 2008]

§ 58.15 Qualifications for approval as a nonprofit budget and credit counseling agency.

(a) *Definition of agency.* As used in this section the term ''agency'' means nonprofit budget and credit counseling agency.

(b) *Qualifications.* To be included on the list of approved nonprofit budget and credit counseling agencies under 11 U.S.C. 111 an agency shall meet the qualifications set forth in paragraphs

(d) through (i) of this section. An agency shall continuously meet these qualifications in order to remain included on this list when the list is updated thereafter.

(c) *Preemption.* Nothing contained in these regulations or the related application, appendices or instructions is intended to preempt any applicable law or regulation governing the conduct or operations of an agency.

(d) *Structure and organization.* A nonprofit budget and credit counseling agency must:

(1) Be organized and operated as a nonprofit entity;

(2) Be in compliance with all applicable laws and regulations of the United States and each state, commonwealth, district, or territory of the United States in which the agency conducts credit counseling services;

(3) Have an independent board of directors the majority of which:

(i) Are not employed by such agency; and

(ii) Will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(4) Ensure that no member of the board of directors or trustees, officer, manager, employee, counselor, or agent is a United States Trustee Program employee, a panel or standing trustee, a Federal judge, a Federal court employee, a certified public accountant that performs audits of the agency's trust accounts, or a person with a financial or familial connection to the United States Trustee Program.

(5) Avoid any conduct or transactions that generate or create the appearance of generating a private benefit for any individual or group related or connected to the Agency.

(e) *Fees.* If a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee; the agency's criteria for providing services without a fee or at a reduced rate must be provided to the United States Trustee. In addition, an agency shall:

(1) Have sufficient computer capabilities or secure access to issue certificates of completion of credit counseling in conformance with the directives established by the EOUST;

(2) Not withhold a certificate of counseling completion because of a client's inability to pay;

(3) Advise the client of the fee schedule before services are provided and inform the client that services are available for free or at a reduced rate based on a client's ability to pay;

(4) Issue a certificate to any client who completes credit counseling and a budget analysis, regardless of whether a client agrees to participate in a debt management plan and without regard to the client's ability to pay;

(5) Issue the certificate within one business day to a client after completion of the required counseling or upon the earlier of the following:

(i) A request by a client for the issuance of a certificate; or

(ii) The completion or termination of a counseling session, which may include the administration of a debt management plan;

(6) Not charge a separate fee for the issuance of a certificate of counseling unless the agency has clearly disclosed such fee before the initial credit counseling session;

(7) Issue a certificate to each spouse whether counseling was provided individually or in a joint session;

(8) Maintain adequate records to issue replacement certificates and to verify the authenticity of certificates filed by bankruptcy debtors;

(9) Provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, the cost of services to be paid by the client and how such costs will be paid, before services are rendered and regardless of whether the client enters into a debt management plan.

(f) *Standards for counseling and counselors.* Agencies and credit counselors shall not, unless otherwise authorized by law, provide legal advice on any matter. Agencies and credit counselors shall:

(1) Provide adequate briefings, budget analysis, and credit counseling services to clients lasting an average of 60 to 90 minutes in length that include an outline of available counseling opportunities to resolve a client's credit problems, an analysis of the client's current financial condition, discussion

of the factors that caused such financial condition, and assistance in developing a plan to respond to the client's problems without incurring negative amortization of debt;

(2) Provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in sub-paragraph (1) of this paragraph. A counselor shall be deemed to have adequate training and experience to provide credit counseling and budget analysis if the counselor is accredited or certified by a recognized independent organization, or has successfully completed a course of study acceptable to the United States Trustee and has worked a minimum of six months in a related area, including personal finance, budgeting, and debt management. The United States Trustee Program does not endorse any specific course or certification program;

(3) Demonstrate adequate experience and background in providing credit counseling, which means, at a minimum, that an agency must:

(i) Have experience in providing credit counseling for the previous two years. Alternatively, if an agency fails to meet the two-year requirement, the agency must currently employ in each office location that serves clients at least one office supervisor with experience and background in providing credit counseling for no less than two of the five years preceding the relevant application date, including only experience obtained on or after January 1, 2003; and

(ii) If an agency offers telephone or Internet credit counseling services, the agency must, in addition to all other requirements, demonstrate sufficient experience and proficiency in designing and providing such services over the telephone and/or Internet, including verification procedures to identify the person receiving the counseling services and to ensure that the counseling services are properly completed.

(g) *Activity report.* Upon application for annual approval, the agency must furnish an estimate of the information requested in Appendix E, ''*Activity Report for Approved Agencies,*'' of the application projected to the end of either the probationary period or annual period. Within thirty (30) days after the completion of either the probationary period or annual period, the agency must furnish an amended Appendix E which includes the actual information.

(h) *Agency declarations and acknowledgments.* (1) The agency's president, chairman, trustee, or other authorized official is required to declare, by signing the application, that such individual is authorized to complete the application on behalf of the agency; that such individual has read and knows the contents of the application and all enclosures and attachments submitted; and that such individual affirms under penalty of perjury that all of the representations and statements contained therein are true and correct to the best of such individual's knowledge, information, and belief;

(2) By executing and submitting the ''*Application for Approval as a Nonprofit Budget and Credit Counseling Agency,*'' the agency acknowledges and agrees to abide by the prohibitions, limitations, and obligations set forth in Appendix A, ''*Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Nonprofit Budget and Credit Counseling Agency,*'' of the application which include, but are not limited to, the following:

(i) Making all records relating to the agency's compliance with 11 U.S.C. 111 available to the United States Trustee and EOUST upon request and cooperating with the United States Trustee and EOUST for any scheduled or unscheduled on-site visits and customer service audits;

(ii) Cooperating with the United States Trustee and the EOUST in timely responding to any questions or inquiries concerning the agency's operations and services;

(iii) Not excluding a creditor from a debt management plan because the creditor declines to make a ''fair share'' contribution to the agency;

(iv) Agreeing that any forms, agreements, contracts, or other materials provided to a client will not limit the client's right to seek damages against an agency as provided for in 11 U.S.C. 111(g)(2);

(v) Conducting a state and Federal criminal background check at least every five years for each person providing credit counseling services, if such criminal background check is authorized under state law, and not employing as a counselor anyone who has been convicted of any felony, or a crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines, upon review and in his or her discretion, circumstances warrant a waiver of this employment requirement. The state criminal background check shall be conducted in the state where the counselor resides. If a criminal background check is not authorized by state law, the agency shall obtain a sworn statement from each counselor, at least every five years, which attests to whether the counselor has been convicted of any felony or a crime involving fraud, dishonesty, or false statements;

(vi) Referring clients for counseling services only to agencies that are approved by the United States Trustee;

(vii) Complying with the EOUST's directions on approved advertising, which is located in Appendix A to the application;

(viii) Not disclosing or providing to a credit reporting agency information concerning whether a client has received or sought instruction concerning credit counseling or personal financial management from an agency, and not selling information about a client to any third party without the client's written permission, regardless of whether the counseling is presented in a classroom, on the telephone, on the Internet, or any other venue;

(3) Upon request of the United States Trustee or EOUST, an agency shall submit a completed and signed tax waiver, which authorizes the United States Trustee or EOUST to seek confidential information regarding the agency from the Internal Revenue Service.

(i) *Agency financial requirements and surety bonds.* (1) If an agency offers debt management plans, the agency must have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan, and provide for the safekeeping and payment of client funds, including an annual audit of the trust accounts in accordance with generally accepted auditing standards by an independent certified public accountant, and appropriate employee bonding; which includes:

(i) Depositing all client funds into a trust account insured by a Federal institution with respect to each client. The records creating the trust account must demonstrate that the trust account was established in a fiduciary capacity and must comply with the Federal institution's regulations so that each client's funds are insured up to the maximum amount allowable by the Federal institution;

(ii) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency; and

(iii) Obtaining a surety bond payable to the United States in an amount which is the lesser of:

(A) Two percent of the agency's prior year disbursements made from trust accounts; or

(B) Equal to the average daily balance maintained in all trust accounts for the six months prior to submission of the application. At a minimum, the bond must be $5,000;

(2) An agency may receive an offset or credit for the surety bond amount as follows:

(i) The agency has obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, in compliance with the requirements of the state, commonwealth, district, or territory ("state") in which the agency seeks approval from the United States Trustee;

(ii) The surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) The surety bond, or similar cash, securities, insurance, or letter of credit, must be written in favor of the state or the appropriate state agency; and

(iv) The offset or credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state;

(3) An agency must have adequate employee bonding or fidelity insurance. The amount of such bonding or fidelity shall be 50 percent of the surety bond amount calculated prior to any offset/credit that the agency may receive for state bonds. At a minimum, the employee bond or fidelity insurance must be $5,000;

(4) An agency may receive an offset or credit in the employee bond/fidelity insurance amount as follows:

(i) The agency has obtained an employee bond or fidelity insurance in compliance with the requirements of a state, commonwealth, district, or territory in which the agency seeks approval from the United States Trustee;

(ii) The deductible cannot exceed a reasonable amount considering the financial resources of the agency; and

(iii) The offset/credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state;

(5) If the agency has contracted with another entity (''service provider'') to administer any part of its debt management plan, the service provider is approved by the United States Trustee as a nonprofit budget and credit counseling agency, or the service provider is specifically covered under the agency's surety bond or has a surety bond in a sufficient amount to provide for the safekeeping of the agency's client funds, and the service provider agrees in writing to allow the United States Trustee or EOUST to audit the trust accounts maintained by the service provider and to review the service provider's internal controls and administrative procedures.

[71 FR 38078, July 5, 2006]

§ 58.16 Procedures for inclusion on the approved list.

(a) As used in this section the term ''agency'' means nonprofit budget and credit counseling agency.

(b) Each nonprofit budget and credit counseling agency seeking to be included on the list of approved agencies must complete in its entirety the application form EOUST–CC1, ''*Application for Approval as a Nonprofit Budget and Credit Counseling Agency*'' (application), including all appendices, and submit it at the address indicated on the application.

(c) The application must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(d) An application may not be accepted by the EOUST unless it is complete and has been signed by an agency representative who is authorized to sign on behalf of the agency. An application that is incomplete or has been altered, amended, or changed in any respect from the application at the United States Trustee Program's Web site may not be accepted by the EOUST. Such an application will be denied, and no further action will be taken on the request for inclusion on the approved list until a new application is submitted that corrects the defects.

(e) The EOUST will not accept an application submitted by an agency on behalf of another individual or group of individuals. Each agency that desires to be included on the approved list must submit its own application.

(f) Each agency must submit a new application 45 to 60 days before expiration of its six month probationary period or annual period to be considered for annual approval. After the application is completed and signed, the originals must be mailed to the EOUST, Credit Counseling Application Processing, at the address indicated on the application. The EOUST will not accept a photocopy or facsimile of the application.

(g) An agency whose name appears on the list incorrectly may submit a written request that the name be corrected. An agency whose name appears on the list may submit a written request that its name be removed from the list.

(h) By submitting an application, the agency expressly consents to the release and disclosure of the agency's name on the approved list and the publication of the agency's contact information.

(i) Obligation to Update Information: (1) The agency has a continuing duty to promptly notify the EOUST of any circumstances that would materially alter or change a response to any section of the application, including but not limited to, changes in the location of primary or satellite business office(s); the principal contact person; name or fictitious name under which the agency does business; management, including the board of directors; a merger or consolidation with another entity; and the banks or financial institutions used by the agency;

(2) The agency shall request approval by amendment to its application, and prior to occurrence of the following changes:

(i) Cancellation or change in amount of the surety bond or employee fidelity bond or insurance;

(ii) The engagement of a service provider to provide counseling services to administer debt management plans, or to otherwise control or account for client funds;

(iii) An increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's policy for the reduction or waiver of fees;

(iv) Expansion into additional judicial districts or withdrawal from judicial districts where the agency is approved; and

(v) Method of delivery or type of counseling services;

(3) The agency must include with any amendment to its application, a newly executed ''certification and signature;''

(4) The agency will notify the EOUST immediately upon the occurrence of any of the below noted events:

(i) Cancellation or termination of tax exempt status of the agency by the Internal Revenue Service;

(ii) Cessation of business of the agency or of any office of the agency;

(iii) Termination or cancellation of any surety bond or fidelity insurance;

(iv) Any action brought against the agency by a Federal or state agency, including, but not limited to, the Federal Trade Commission, or any action against the surety bond or fidelity insurance;

(v) Any action by a state agency to suspend the license or cancel other authorization to do business;

(vi) A suspension by an accreditation organization or denial of accreditation;

(vii) Withdrawal as an approved agency; and

(viii) Change in the agency's nonprofit status;

(j) An approved agency may not transfer or assign its United States Trustee approval under section 111 as a nonprofit budget and credit counseling agency to any party.

[71 FR 38078, July 5, 2006]

§58.17 Procedures for denying an application or removing an agency from the approved list, and the administrative review rights granted to denied or removed agencies.

(a) As used in this section the term ''agency'' means nonprofit budget and credit counseling agency.

(b) No administrative review will be granted to any applicant that submitted an incomplete application and had its application denied due to incompleteness and failed to subsequently submit a completed application.

(c) The agency shall be notified in writing of any decision to deny the agency's application or to remove the agency from the approved list (''notice''). The notice shall state the reason(s) for the decision and shall reference any documents or communications with the agency, which were relied upon in making the denial or removal decision. If such documents or communications were not provided to the United States Trustee or the EOUST by the agency, copies of the documents or communications shall be provided with the notice. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(d) The notice shall advise the agency that the decision is final unless the agency requests in writing a review (''request for review'') by the Director, Executive Office for United States Trustees (''Director''), no later than 20 calendar days from the date of issuance of the denial or removal notice. In order to be timely, a request for review must be received at the Office of the Director no later than 20 calendar days from the date of the denial or removal notice to the agency.

(e) A decision to remove an agency from the approved list shall take effect upon the expiration of an agency's time to seek review from the Director or, if the agency timely seeks such review, upon the issuance of a final written decision by the Director.

(f) Notwithstanding sub-paragraph (e) of this section, a decision to remove an agency from the approved list may include, or may later be supplemented by, an interim directive, which may immediately remove an agency from the approved list. Such an interim directive may be issued if one or more of the following are specifically found:

(1) The agency is not providing for the safekeeping and payment of client funds;

(2) The agency's surety bond has been canceled;

(3) The agency made a material false statement on the application;

(4) The agency (board of directors, officer, manager, employee, counselor, or agent) has engaged in conduct that is dishonest, deceitful, fraudulent, or criminal in nature;

(5) The agency (board of directors, officer, manager, employee, counselor, or agent) has engaged in other gross misconduct that is unbefitting the agency's position as an approved agency;

(6) The agency's nonprofit status has been revoked by the entity that issued the agency its nonprofit status;

(7) Revocation of the agency's license to do business in a particular state, provided the immediate removal shall apply only to the federal judicial districts within the particular state; or

(8) The Internal Revenue Service revokes the agency's tax exempt status.

(g) The agency's request for review shall fully describe why the agency disagrees with the denial or removal decision, and shall be accompanied by all documents and materials that the agency wants the Director to consider in reviewing the decision. The agency shall send a copy of the request for review, and the accompanying documents and materials, to the Director by overnight courier, for delivery the next business day, and must be received by the Director within 20 calendar days of the denial or removal notice.

(h) The Director may seek additional information from any party, in the manner and to the extent the Director deems appropriate.

(i) The Director shall issue a written decision no later than 45 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the period. That decision shall determine whether the denial or removal decision is supported by the record and the action is an appropriate exercise of discretion, and shall adopt, modify, or reject the denial or removal decision. The Director's decision shall constitute final government agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the denial or removal decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

[71 FR 38078, July 5, 2006]

§§ 58.18–58.24 [Reserved]

§ 58.25 Qualifications for approval as providers of a personal financial management instructional course.

(a) *Definition of provider.* As used in this section the term ''provider'' means a provider of a personal financial management instructional course.

(b) *Qualifications.* To be included on the list of approved providers under 11 U.S.C. 111, a provider shall meet the qualifications set forth in paragraphs (d) through (k) of this section. A provider shall continuously meet these qualifications in order to remain included on this list when the list is updated thereafter.

(c) *Preemption.* Nothing contained in these regulations or the related application, appendices or instructions is intended to preempt any applicable law or regulation governing the conduct or operations of a provider.

(d) *Structure and organization.* A provider of a personal financial management instructional course must be in compliance with all applicable laws and regulations of the United States and each state, commonwealth, district, or territory of the United States in which the provider conducts courses. Nothing contained in these instructions, the application, or the appendices thereto, is intended to preempt any applicable law or regulation governing the conduct or operations of the provider.

(e) *Standards for teachers.* A provider shall employ trained personnel with adequate experience and training in providing effective instruction and services, which means the provider shall employ, at a minimum, an individual who holds at least one of the following current certifications and/or accreditations, or who has equivalent training or experience, to supervise instructors:

(1) A state teacher's certificate in any subject;

(2) Certification as a Certified Financial Planner (CFP);

(3) Certification or accreditation as a credit counselor or a financial counselor by a recognized independent organization;

(4) Certification by the American Association of Family and Consumer Sciences;

(5) Registered as a Registered Financial Consultant (RFC); or

(6) Certified as a Certified Public Accountant (CPA).

(f) *Learning materials and methodologies.* A provider shall provide learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course, which include written information and instruction on all of the following topics:

(1) Budget development, which consists of the following:

(i) Setting short-term and long-term financial goals, as well as developing skills to assist in achieving these goals;

(ii) Calculating gross monthly income and net monthly income;

(iii) Identifying and classifying monthly expenses as fixed, variable, or periodic;

(2) Money management, which consists of the following:

(i) Keeping adequate financial records;

(ii) Developing decision-making skills required to distinguish between wants and needs, and to comparison shop for goods and services;

(iii) Maintaining appropriate levels of insurance coverage, taking into account the types and costs of insurance;

(iv) Saving for emergencies, for periodic payments, and for financial goals;

(3) Wise use of credit, which consists of the following:

(i) The types, sources, and costs of credit and loans;

(ii) Identifying debt warning signs;

(iii) Appropriate use of credit and alternatives to credit use;

(iv) Checking a credit rating;

(4) Consumer information, which consists of the following:

(i) Public and non-profit resources for consumer assistance;

(ii) Applicable consumer protection laws and regulations, such as those governing correction of a credit record and protection against consumer fraud.

(g) *Course procedures.* A provider shall ensure the following procedures are followed:

(1) Generally, the provider shall:

(i) Require each debtor student to provide proof of identification, to provide his/her bankruptcy case number, and to sign in and sign out of the course;

(ii) Conduct the course for a minimum of two hours in length. Courses offered via the Internet or telephone should be designed for completion with a minimum of two hours;

(iii) At the end of the course, collect from each debtor student a completed course evaluation. The evaluation shall be in a form acceptable to the EOUST;

(2) For classroom instruction, the provider shall ensure:

(i) A teacher is present for purposes of instruction and interaction with debtor students;

(ii) Class size is reasonably limited to ensure an effective presentation of the course materials;

(3) For telephone instruction, the provider shall:

(i) Provide a toll-free telephone number;

(ii) Comply with the Americans with Disabilities Act and also include a toll-free number for deaf or hearing-impaired debtor students, e.g. TTY, TDD, or Text Telephone;

(iii) Employ adequate procedures to ensure that the debtor student is the individual who completed the course;

(iv) Ensure that a teacher is present telephonically for purposes of instruction and interaction with debtor students;

(v) Provide copies of the learning materials to debtor students before the telephone instruction session;

(4) For Internet instruction, the provider shall:

(i) Comply with the Americans with Disabilities Act and its application to the Internet;

(ii) Employ adequate procedures to ensure that the debtor student is the individual who completed the course and that the individual received two hours of instruction;

(iii) Ensure that a teacher will respond within one business day to a debtor student's questions or comments;

(5) In addition to meeting all other requirements, the provider who conducts telephone or Internet courses must demonstrate sufficient experience and proficiency in designing and providing services over the telephone or Internet.

(h) *Facilities.* A provider shall provide adequate facilities situated in a reasonably convenient location at which such instructional course is offered, except that such facilities may include the provisions of such instructional course by telephone or through the Internet, if such instructional course is effective;

(1) The provider shall ensure that any facility used by debtor students complies with all applicable laws and regulations including, but not limited to, the Americans with Disabilities Act Accessibility Guidelines, and all federal, state, and local fire, health, safety, and occupancy laws, codes, rules, or regulations.

(i) *Activity report and records.* A provider shall prepare and retain reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the EOUST or the United States Trustee for the district in which such instructional course is offered;

(1) Upon application for annual approval, the provider must furnish an estimate of the information requested in Appendix F to the application, projected to the end of either the probationary period or annual period. Within 30 days after the completion of either the probationary period or annual period, the provider must furnish an amended Appendix F which includes the actual information;

(2) Make all records related to the provider's compliance with 11 U.S.C. 111 available to the United States Trustee or EOUST upon request and cooperate with the United States Trustee or EOUST for any scheduled or unscheduled on-site visit or customer service audit.

(j) *Fees and certificates.* If a fee is charged for counseling services, a provider shall charge a reasonable fee, and provide services without regard to ability to pay the fee; the provider's criteria for providing services without a fee or at a reduced rate must be provided to the United States Trustee. In addition, a provider shall:

(1) Have sufficient computer capabilities to issue certificates of completion of an instructional course in conformance with the directives established by the EOUST;

(2) Advise the debtor student of the fee schedule before the instructional course is provided and inform the debtor student that services are available for free or at a reduced rate based on the debtor student's ability to pay;

(3) Issue certificates to any debtor student who completes an instructional course without regard to the debtor student's ability to pay;

(4) Issue the certificate within three business days to a debtor student after completion of the required instructional course;

(5) Not withhold the issuance of a certificate because of a debtor student's failure to obtain a passing grade

on a quiz, examination, or test. Although a test may be incorporated into the curriculum to evaluate the effectiveness of the course and to ensure that the course has been completed, the provider cannot deny a certificate to a debtor student if the debtor student has completed the course as designed;

(6) Not charge a separate fee for the issuance of a certificate unless the provider has clearly disclosed such fee before the beginning of the instructional course;

(7) Issue a certificate to each spouse in a joint case whether the course is completed independently or jointly;

(8) Maintain adequate records to issue replacement certificates and to verify the authenticity of certificates filed by bankruptcy debtors.

(k) *Provider declarations and acknowledgments.* (1) The provider's owner, president, chairman, trustee, or other authorized official is required to declare, by signing the application, that such individual is authorized to complete the application on behalf of the provider; that such individual has read and knows the contents of the application and all enclosures and attachments submitted; and to affirm under penalty of perjury that all of the representations and statements contained therein are true and correct to the best of such individual's knowledge, information, and belief;

(2) The provider shall disclose the following information to each debtor student before the commencement of the instructional course:

(i) The provider's fee schedule, including any cost to the debtor student in addition to the course fee;

(ii) A statement that the course is offered to debtor students without regard to a debtor student's ability to pay;

(iii) The qualifications, including educational and training background, of the provider's teachers;

(iv) A schedule of course dates, times, and locations;

(v) A statement that the provider does not pay or receive fees or other consideration for the referral of debtor students to or by the provider;

(vi) A statement that, upon completion of the course, the provider will provide a certificate of course completion to the debtor student;

(3) By executing and submitting the ''*Application for Approval as a Provider of a Personal Financial Management Instructional Course*,'' the provider acknowledges and agrees to abide by the prohibitions, limitations, and obligations set forth in Appendix A, ''*Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Provider of a Personal Financial Management Instructional Course*,'' which include, but are not limited to, the following:

(i) Ensuring that no member of the board of directors or trustees, owner, officer, manager, employee, or agent is a United States Trustee Program employee, panel trustee, or person with a financial or familial connection to a panel trustee or an employee of the United States Trustee Program. For purposes of this paragraph, a person is not deemed to have a financial relationship to a panel trustee solely because the person is an employee of the panel trustee;

(ii) Not paying or receiving referral fees or other consideration for the referral of debtor students;

(iii) Ensuring that the course will not contain any commercial advertising, and that the provider shall not promote, market, or sell financial products; solicit business of any type; or sell information about the debtor to any third party without the debtor's permission, whether the course is presented in a classroom, on the telephone, or on the Internet;

(iv) Complying with the EOUST's directions on approved advertising, which is located in Appendix A to the application;

(v) Cooperating with the EOUST and the United States Trustee in timely responding to any questions or inquiries concerning the provider's operations and/or instructional course;

(vi) Consenting that any forms, agreements, contracts, or other materials furnished to a debtor student will not limit the debtor student's ability to bring an action or claim under the provision of the United States Bankruptcy Code. 11 U.S.C. 101 et. seq.

(l) *Universities.* Accredited universities and community colleges (''universities'') are eligible to apply to become providers using a streamlined version of the application. Universities need to complete only the following portions of the application:

(1) In section 1—General Information Concerning the Provider—complete sections: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, and 1.10;

(2) In section 4—Learning Materials and Methodologies—complete sections: 4.1, 4.2, 4.4, 4.5, 4.6, 4.7, and 4.8;

(3) In section 6—Fees and Issuance of Certificates—complete section 6.1;

(4) In section 7—Activity Report for Approved Providers—complete section 7.1;

(5) In section 8—Acknowledgments, Agreements, and Declarations—complete sections 8.1 and 8.2;

(6) In section 9—Certification and Signature—execute the application as indicated in the instructions;

(7) Completed applications should be submitted to the EOUST in accordance with the procedures in section 58.19.

[71 FR 38082, July 5, 2006]

§ 58.26 Procedures for inclusion on the approved provider list.

(a) As used in this section the term ''provider'' means a provider of a personal financial management instructional course.

(b) Each provider seeking to be included on the list of approved providers must complete in its entirety the application form EOUST–DE1, ''Application for Approval as a Provider of a Personal Financial Management Course'' (application), including all appendices, and submit it at the address indicated on the application. Accredited universities may complete only the portions of the application as indicated in section 58.25(l).

(c) The application must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(d) An application will not be accepted by the EOUST unless it is complete and has been signed by a provider representative who is authorized to sign on behalf of the provider. An application that is incomplete or has been altered, amended, or changed in any respect from the application at the United States Trustee Program's Web site will not be accepted by the EOUST. Such an application will be denied, and no further action on the request for inclusion on the approved list will be taken until a new application is submitted that corrects the defects.

(e) The EOUST will not accept an application submitted by a provider on behalf of another individual or group of individuals. Each provider that desires to be included on the approved list must submit its own application.

(f) Each provider must submit a new application 45 to 60 days before expiration of its six month probationary period or annual period to be considered for annual approval. After the application is completed and signed, the originals and a copy must be mailed to the EOUST, Debtor Education Provider Application Processing, at the address indicated on the application. The EOUST will not accept a photocopy or facsimile of the application in lieu of the original.

(g) A provider whose name appears on the list incorrectly may submit a written request that the name be corrected. A provider whose name appears on the list may submit a written request that its name be removed from the list.

(h) By submitting an application, the provider expressly consents to the release and disclosure of the provider's name on the approved list, and the publication of the provider's contact information.

(i) Obligation to Update Information: (1) The provider has a continuing duty to promptly notify the EOUST of any circumstances that would materially alter or change a response to any section of the application, including but not limited to, changes in the location of primary or satellite business office(s); the principal contact person; name or fictitious name under which the provider does business; management, including the board of directors; and a merger or consolidation with another entity;

(2) The provider shall request approval by amendment to its application, and prior to occurrence of the following changes:

(i) An increase in the fees, contributions, or payments received from debtor students for the instructional course or a change in the provider's policy for the reduction or waiver of fees;

(ii) Expansion into additional judicial districts or withdrawal from judicial districts where the provider is approved; and

(iii) Method of delivery type of instructional services or course curriculum;

(3) The provider must include with any amendment to its application, a newly executed ''certification and signature;''

(4) The provider will notify the EOUST immediately upon the occurrence of any of the below noted events:

(i) Cessation of business of the provider or of any office of the provider;

(ii) Any action by a state agency to suspend the license or cancel other authorization to do business;

(iii) A suspension by an accreditation organization or denial of accreditation; and

(iv) Withdrawal as an approved provider;

(j) An approved provider may not transfer or assign its United States Trustee approval under section 111 as a provider of a personal financial management instructional course.

[71 FR 38082, July 5, 2006]

§ 58.27 Procedures for denying an application or removing a provider from the approved list, and the administrative review rights granted to denied or removed providers.

(a) As used in this section the term ''provider'' means a provider of a personal financial management instructional course.

(b) No administrative review will be granted to any applicant that submitted an incomplete application and had its application denied due to incompleteness and failed to subsequently submit a completed application.

(c) The provider shall be notified in writing of any decision denying the provider's application or to remove the provider from the approved list (''notice''). The notice shall state the reason(s) for the decision and shall reference any documents or communications with the provider, which were relied upon in making the denial or removal decision. If such documents or communications were not provided to the United States Trustee or the EOUST by the provider, copies of the documents or communications shall be provided with the notice. The notice shall be sent to the provider by overnight courier, for delivery the next business day.

(d) The notice shall advise the provider that the decision is final unless the provider requests in writing a review (''request for review'') by the Director, Executive Office for United States Trustees (''Director''), no later than 20 calendar days from the date of issuance of the denial or removal notice. In order to be timely, a request for review must be received at the Office of the Director no later than 20 calendar days from the date of the removal notice to the provider.

(e) A decision to remove a provider from the approved list shall take effect upon the expiration of a provider's time to seek review from the Director or, if the provider timely seeks such review, upon the issuance of a final written decision by the Director.

(f) Notwithstanding sub-paragraph (e) of this section, a decision to remove a provider from the approved list may include, or may later be supplemented by, an interim directive, which may immediately remove a provider from the approved list. Such an interim directive may be issued if one or more of the following are specifically found:

(1) The provider made a material false statement on the application;

(2) The provider (board of directors, officer, manager, employee, counselor, or agent) has engaged in conduct that is dishonest, deceitful, fraudulent, or criminal in nature;

(3) The provider (board of directors, officer, manager, employee, counselor, or agent) has engaged in other gross misconduct that is unbefitting the provider's position as an approved provider;

(4) Revocation of the provider's license to do business in a particular state, provided the immediate removal shall apply only to the federal judicial districts within the particular state.

(g) The provider's request for review shall fully describe why the provider disagrees with the denial or removal decision, and shall be accompanied by all documents and materials that the provider wants the Director to consider in reviewing the decision. The provider shall send a copy of the request for review, and the accompanying documents and materials, to the Director by overnight courier, for delivery the next business day, and must be received by the Director within 20 calendar days of the denial or removal notice.

(h) The Director may seek additional information from any party, in the manner and to the extent the Director deems appropriate.

(i) The Director shall issue a written decision no later than 45 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time or the Director extends the period. That decision shall determine whether the denial or removal decision is supported by the record and the action is an appropriate exercise of discretion, and shall adopt, modify, or reject the denial or removal decision. The Director's decision shall constitute final government agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the denial or removal decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) A provider that files a request for review shall bear its own costs and expenses, including counsel fees.

[71 FR 38082, July 5, 2006]

APPENDIX A TO PART 58—GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. 330

(a) *General Information.* (1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. (''Code''), in accordance with procedural guidelines (''Guidelines'') adopted by the Executive Office for United States Trustees (''Executive Office''). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United

States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) *Contents of Applications for Compensation and Reimbursement of Expenses.* All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. §330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format. (i) To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or ''lumped'' together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc,) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

EXHIBIT A—PROJECT CATEGORIES

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Sales, leases (§365 matters), abandonment and related transaction work.

Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

Case Administration: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

Employee Benefits/Pensions: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

Fee/Employment Applicants: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

Fee/Employment Objections: Review of and objections to the employment and fee applications of others.

Financing: Matters under §§361, 363 and 364 including cash collateral and secured claims; loan document analysis.

Litigation: There should be a separate category established for each matter (e.g., XYZ Litigation).

Meetings of Creditors: Preparing for and attending the conference of creditors, the §341(a) meeting and other creditors' committee meetings.

Plan and Disclosure Statement: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

Relief From Stay Proceedings: Matters relating to termination or continuation of automatic stay under §362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

Accounting/Auditing: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

Business Analysis: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

Corporate Finance: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

Data Analysis: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

Litigation Consulting: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

Reconstruction Accounting: Reconstructing books and records from past transactions and bringing accounting current.

Tax Issues: Analysis of tax issues and preparation of state and federal tax returns.

Valuation: Appraise or review appraisals of assets.

[61 FR 24890, May 17, 1996]

PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

Sec.
59.1 Introduction.
59.2 Definitions.
59.3 Applicability.
59.4 Procedures.
59.5 Functions and authorities of the Deputy Assistant Attorneys General.
59.6 Sanctions.

AUTHORITY: Sec. 201, Pub. L. 96–440, 94 Stat. 1879 (42 U.S.C. 2000aa–11).

SOURCE: Order No. 942–81, 46 FR 22364, Apr. 17, 1981, unless otherwise noted.

§59.1 Introduction.

(a) A search for documentary materials necessarily involves intrusions into personal privacy. First, the privacy of a person's home or office may be breached. Second, the execution of such a search may require examination of private papers within the scope of the search warrant, but not themselves subject to seizure. In addition, where such a search involves intrusions into professional, confidential relationships, the privacy interests of other persons are also implicated.

(b) It is the responsibility of federal officers and employees to recognize the importance of these personal privacy interests, and to protect against unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive. The purpose of the guidelines set forth in this part is to assure that federal officers and employees do not use search and seizure to obtain documentary materials in the possession of disinterested third parties unless reliance on alternative means would substantially jeopardize their availability (*e.g.*, by creating a risk of destruction, etc.) or usefulness (*e.g.*, by detrimentally delaying the investigation, destroying a chain of custody, etc.). Therefore, the guidelines in this part establish certain criteria and procedural requirements which must be met before a search warrant may be used to